IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10764 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?
5	Whether it is to be circulated to the civil judge?

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BHAGVANDAS VALJIBHAI PRAJAPATI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PS PATEL for the Petitioner
MS MANISHA L SHAH, A.G.P. for Respondent No.s 1 and 2.
MR MANISH J PATEL for Respondent No. 3

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/03/2006

ORAL JUDGMENT

1. In the present petition the petitioner has challenged an order dated 23.05.2005 passed by the District Primary Education Officer, Sabarkantha by which the petitioner is ordered to retire from service with

retrospective effect on 31.05.2002.

2. Short facts leading to the present petition are as follows:

2.1 The date of birth of the petitioner recorded in school records was 28.02.1944. He passed S.S.C. Examination and obtained admission in P.T. College in the year 1966. It is the stand of the petitioner that his date of birth recorded in the school records as 28.02.1944 was inaccurate and his correct date of birth is 28.12.1946. This claim was made by the petitioner on the basis of horoscope. He applied to the D.E.O. for correction of his date of birth. The D.E.O. granted such permission by order dated 17-30.04.1968.

2.2 On the basis of his educational qualifications, the petitioner was appointed to the post of primary school teacher in the school run by District Panchayat, Ahmedabad. His date of appointment was 02.09.1969 and he joined services on 08.09.1969. In the service record the date of birth recorded is 28.12.1946. In the year 1978, he was transferred from Ahmedabad District to Sabarkantha District again as a primary school teacher. In the

service record and seniority list published by the employer, the date of birth of the petitioner was recorded as 28.12.1946. On 30.09.2002, T.D.O., Idar asked the petitioner to produce original certificates in support of his Date of Birth. There was no further communication from the respondents in this regard. However, suddenly, by an order dated 05.10.2004, the petitioner was made to retire with retrospective effect on 31.05.2002. The petitioner challenged the order by filing Special Civil Application No. 13854 of 2004. Initially, this Court granted Rule and interim relief against the implementation of the order by order dated 19.10.2004. By order dated 28.01.2005 Special Civil Application No. 13854 of 2004 came to be allowed. The Court found that the impugned order dated 05.10.2004 was passed without giving any opportunity of being heard to the petitioner and therefore, the order was quashed. However, it was left open to the respondents to pass fresh order in accordance with law after giving reasonable opportunity of being heard. Pursuant to the said order dated 28.01.2005 passed by this Court, the respondents permitted the petitioner to participate in the inquiry and permitted him to produce necessary documents in support of his assertion that his date of

birth was 28.12.1946. Finding that the petitioner was unable to substantiate his claim of having been born on 28.12.1946, the D.E.O. passed the impugned order dated 23.05.2005. He was pleased to come to conclusion that the petitioner is unable to produce any proof in support of his case that his date of birth is 28.12.1946. Treating 28.02.1944 to be his correct date of birth, he was made to retire on 31.05.2002. It is this order that the petitioner has challenged in the present petition.

3. From the above discussion, it can be seen that the date of birth of the petitioner recorded in the school records was 28.02.1944. The petitioner however, applied to the D.E.O. and got it changed to 28.12.1946. The petitioner entered into Government service on the basis of said date of birth. He discharged his duties right from 1969 till May 2005. It was towards the fag end of the career of the petitioner, in the year 2004, that the respondents realized that 28.12.1946 may not be the correct date of birth of the petitioner. Initially, after passing the order without any opportunity of being heard given to the petitioner, fresh order came to be passed on 23.05.2005. By the said order with retrospective effect the petitioner is ordered to retire with effect from

31.05.2002.

4. So far as the stand of the respondents is concerned, perhaps they are justified in contending that 28.12.1946 is not correct date of birth of the petitioner. However the same was entered in his service book on the basis of permission to change granted by the D.E.O.

5. Even though the authority of the D.E.O. to grant such permission is under serious doubt, the fact remains that the respondents did not confront the petitioner that the date of birth recorded in the S.S.C. Examination was 28.02.1944. These documents were very much available with the respondents right from the beginning. The date of birth of the petitioner was recorded in his service book and in successive seniority lists published by the respondents. It would therefore, not be equitable to permit the respondents to wipe out the service rendered by the petitioner after 31.05.2002. In view of the fact that the petitioner has actually discharged his duties right up to 31.05.2005, I do not find it just to permit the respondents to seek recovery of the salary already paid for the work done. However, the claim of the petitioner that his correct date of birth is 28.12.1946

cannot be countenanced in any manner. The date of birth recorded in the school was of 28.02.1944. Without proper material or without proper procedure, somehow the same came to be changed to 28.12.1946. The date of birth disclosed before the school authorities and which stayed in the educational record of the petitioner right till he passed out from S.S.C. Examination could not have been changed on mere production of horoscope. Without any additional material horoscope cannot form the basis for correction of date of birth. In any case the date of birth of the petitioner could not have been ordered to be corrected by the D.E.O. He apparently, had no authority to do so. Considering all these aspects of the matter, though the petitioner may retain the salary for the work already done, he cannot get any post retiral benefits for the extended period of service after 31.05.2002.

6. In the result by partly allowing this petition, the impugned order is modified to the extent that pursuant to the said order, the respondents will not seek recovery of salary and other allowances paid to the petitioner for the work done. For pension and other post retiral benefits the petitioner will not be entitled to claim any benefits for his service rendered after 31.05.2002.

7. With these directions, the petition is disposed of. Rule is made absolute to the above extent. No order as to costs.

[Akil Kureshi, J.]

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